

**IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF MAINE**

COMCAST OF MAINE/NEW HAMPSHIRE, INC.; A&E TELEVISION NETWORKS, LLC; C-SPAN; CBS CORP.; DISCOVERY, INC.; DISNEY ENTERPRISES, INC.; FOX CABLE NETWORK SERVICES, LLC; NBCUNIVERSAL MEDIA, LLC; NEW ENGLAND SPORTS NETWORK, LP; and VIACOM INC.,

Plaintiffs,

v.

JANET MILLS, in her official capacity as the Governor of Maine; AARON FREY, in his official capacity as the Attorney General of Maine; the CITY OF BATH, MAINE; the TOWN OF BERWICK, MAINE; the TOWN OF BOWDOIN, MAINE; the TOWN OF BOWDOINHAM, MAINE; the TOWN OF BRUNSWICK, MAINE; the TOWN OF DURHAM, MAINE; the TOWN OF ELIOT, MAINE; the TOWN OF FREEPORT, MAINE; the TOWN OF HARPSWELL, MAINE; the TOWN OF KITTERY, MAINE; the TOWN OF PHIPPSBURG, MAINE; the TOWN OF SOUTH BERWICK, MAINE; the TOWN OF TOPSHAM, MAINE; the TOWN OF WEST BATH, MAINE; and the TOWN OF WOOLWICH, MAINE;

Defendants.

Case No. 1:19-cv-00410-NT

**ANSWER OF DEFENDANT
TOWN OF DURHAM**

NOW COMES the Defendant, Town of Durham, by and through undersigned counsel, and answers Plaintiffs' Complaint as follows:

NATURE OF THE CASE

Paragraphs 1 through 10 of Plaintiffs' complaint constitute legal conclusions to which no response is required. To the extent responses are required, Defendant denies the allegations.

JURISDICTION AND VENUE

11. The Defendant admits the allegations contained in paragraph 11 of Plaintiffs' complaint.

12. The Defendant admits the allegations contained in paragraph 12 of Plaintiffs' complaint.

13. The Defendant admits that venue is proper, but denies the remaining allegations contained in paragraph 13 of Plaintiffs' complaint.

PARTIES

14. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

15. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

16. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

17. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

18. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

19. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

20. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

21. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

22. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

23. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

24. The Defendant admits that Janet Mills is the Governor of Maine. As to the rest of the allegations contained in paragraph 24, the Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

25. The Defendant admits that Aaron Frey is the Attorney General of Maine. As to the rest of the allegations contained in paragraph 25, the Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

26. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

27. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

28. The Defendant admits the Town of Bowdoin is a municipality located in the State of Maine. As to the rest of the allegations contained in paragraph 28, the Defendant lacks

information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

29. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

30. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

31. The Defendant admits the Town of Durham is a municipality located in the State of Maine. As to the rest of the allegations contained in paragraph 31, the Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

32. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

33. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

34. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

35. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

36. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

37. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

38. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

39. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

40. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

FACTUAL AND LEGAL BACKGROUND

Cable Operators & Programmers

41. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

42. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

43. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

Federal Law Governing Cable Service

Paragraphs 44 through 53 of Plaintiffs' complaint constitute legal conclusions to which no response is required. To the extent responses are required, Defendant denies the allegations.

The Maine Statute

54. The Defendant admits the allegations contained in paragraph 54 of Plaintiffs' complaint.

55. The Defendant admits the provisions of L.D. 832 in sentence 1 of paragraph 55. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in sentence 2 of paragraph 55, and therefore, denies same.

56. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

57. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

58. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

L.D. 832 IS PREEMPTED BY FEDERAL LAW

59. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same. Further, paragraph 59 of Plaintiffs' complaint constitutes legal conclusions to which no response is required. To the extent responses are required, Defendant denies the allegations.

60. The Defendant denies the allegations contained in paragraph 60 of Plaintiffs' complaint.

61. The Defendant admits the provisions of L.D. 832 in sentence 1 of paragraph 61. The Defendant denies the allegations contained in sentence 2 of paragraph 61 of Plaintiffs' complaint.

Paragraphs 62 through 64 of Plaintiffs' complaint constitute legal conclusions to which no response is required. To the extent responses are required, Defendant denies the allegations.

65. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

66. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

Paragraphs 67 through 71 of Plaintiffs' complaint constitute legal conclusions to which no response is required. To the extent responses are required, Defendant denies the allegations.

72. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

L.D. 832 VIOLATES THE FIRST AMENDMENT

73. The Defendant denies the allegations contained in paragraph 73 of Plaintiffs' Complaint.

Paragraphs 74 through 75 of Plaintiffs' complaint constitute legal conclusions to which no response is required. To the extent responses are required, Defendant denies the allegations.

76. The Defendant denies the allegations contained in paragraph 76 of Plaintiffs' complaint.

Paragraphs 77 through 78 of Plaintiffs' complaint constitute legal conclusions to which no response is required. To the extent responses are required, Defendant denies the allegations.

L.D. 832 Does Not Advance Any Important or Substantial Government Interest

Paragraphs 79 through 83 of Plaintiffs' complaint constitute legal conclusions to which no response is required. To the extent responses are required, Defendant denies the allegations.

84. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

85. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

L.D. 832 Is Not Appropriately Tailored

Paragraphs 86 through 89 of Plaintiffs' complaint constitute legal conclusions to which no response is required. To the extent responses are required, Defendant denies the allegations.

IRREPARABLE HARM TO PLAINTIFFS

90. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

91. The Defendant denies the allegations contained in paragraph 91 of Plaintiffs' Complaint.

92. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

93. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

94. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

95. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

96. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

97. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

98. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

99. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

100. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

101. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

102. The Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, denies same.

FIRST CLAIM FOR RELIEF

L.D. 832 Is Preempted by Federal Law

103. The Defendant repeats and realleges its answers to paragraphs 1 through 102 above as if set forth in full herein.

104. The Defendant denies the allegations contained in paragraph 104 of Plaintiffs' complaint.

105. The Defendant denies the allegations contained in paragraph 105 of Plaintiffs' complaint.

106. The Defendant denies the allegations contained in paragraph 106 of Plaintiffs' complaint.

107. The Defendant denies the allegations contained in paragraph 107 of Plaintiffs' complaint.

SECOND CLAIM FOR RELIEF

L.D. 832 Violates the First Amendment to the U.S. Constitution

108. The Defendant repeats and realleges its answers to paragraphs 1 through 102 above as if set forth in full herein.

109. The Defendant denies the allegations contained in paragraph 109 of Plaintiffs' complaint.

110. The Defendant denies the allegations contained in paragraph 110 of Plaintiffs' complaint.

111. The Defendant denies the allegations contained in paragraph 111 of Plaintiffs' complaint.

112. The Defendant denies the allegations contained in paragraph 112 of Plaintiffs' complaint.

WHEREFORE, Defendant respectfully requests the Court to dismiss Plaintiffs' Complaint and award Defendant its costs and reasonable attorney's fees, and such other and further relief as this Court deems just and proper.

AFFIRMATIVE DEFENSES

1. Plaintiffs' complaint fails to state a claim upon which relief can be granted.
2. Plaintiffs' claim is not ripe.

DATED: October 4, 2019

/s/ John W. Conway

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